In the Supreme Court of the United States

OCTOBER TERM, 1942

Nos. 11-19, 32

GROUP OF INSTITUTIONAL INVESTORS AND MUTUAL SAVINGS BANK GROUP, PETITIONERS

v.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY ET AL.

RECONSTRUCTION FINANCE CORPORATION, PETITIONER

v.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE INTERSTATE COMMERCE COMMISSION AS AMICUS CURIAE

The Interstate Commerce Commission, as the administrative arm in proceedings arising under Section 77 of the Bankruptcy Act, has supported

the petitions for certiorari filed in these cases. It has taken similar action in the *Western Pacific Reorganization* cases (Nos. 7, 8, 20, 33 and 61), and has also filed a brief as *amicus curiae* therein. Its interest in these cases lies primarily in developing a well-understood procedure which will admit of prompt, economical, and efficacious railroad reorganizations. It believes that neither the decision of the Circuit Court of Appeals in the instant cases nor the decision of the Circuit Court of Appeals for the Ninth Circuit in the *Western Pacific* cases will subserve that end.

The plan of reorganization of the Chicago, Milwaukee, St. Paul and Pacific Railroad was formulated after lengthy hearings before the Commission. After further hearings the district court approved the plan (R. 1857–1899; 36 F. Supp. 193). The Circuit Court of Appeals for the Seventh Circuit has reversed the order of the district court. This, it states, it has done reluctantly since there was ample evidence in the record to support the plan but it did so on the ground that the Commission had not made sufficient findings of value with respect to the various creditor interests to enable the court to exercise its statutory function in reviewing the plan.

As in the *Western Pacific* cases, the result was reached upon the asserted controlling authority of *Consolidated Rock Products Co.* v. *DuBois*, 312 U. S. 510. In but one particular are the two decisions conflicting. The Circuit Court of Ap-

peals for the Ninth Circuit held that in order to exclude stockholders from participation it is not enough that the Commission find their equity to be without value but it is necessary for the Commission to determine the value of the debtor's property as of the effective date of the plan. On the other hand the court below in the instant cases held that the finding of no value was sufficient to deny stockholder participation and that the finding of total allowable capitalization provided in the plan was equivalent to a finding of value for the debtor's property as a whole.

Aside from the statement of the case, which has been adequately made in the briefs of Institutional Investors and Savings Bank Groups and the Reconstruction Finance Corporation, the legal propositions which the Commission would here urge are substantially those which it has set out in its brief as *amicus curiae* in the *Western Pacific* cases. Accordingly, we respectfully refer the Court to the argument there made as sustaining the sufficiency of the Commission's reports in the present cases.

Respectfully submitted.

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